IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

S.B. CIVIL WRIT PETITION NO.5819/2004

Kartar Singh vs. Board of Revenue and ors.

Date : 7.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. R.K. Singhal, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 24.11.2004. According to the petitioner, the appeal preferred before the Board of Revenue by the non-petitioners was barred by time. The non-petitioners submitted an application under Section 5 of the Limitation Act for condonation of delay. The application was not decided by the Board of Revenue and despite the objection of the petitioner, the Board of Revenue ignoring the specific prohibition as provided under Order 41 Rule 3(a)(iii) C.P.C., granted an ad-interim order and held that the question of limitation will be decided along with the main appeal and the Board of Revenue also issued certain directions in the appeal which clearly indicate that the Board of Revenue, without deciding the question of

limitation, is proceeding to hear the main appeal on merits. According to learned counsel for the petitioner, unless and until the delay is condoned, there is no competent appeal which can be decided by the appellate court. Therefore, to decide the appeal, the Court is first required to determine the question of limitation and the Court may come to the conclusion that the delay can be condoned and thereafter, on condonation of delay, the appeal becomes competent.

I have considered the submissions of the learned counsel for the petitioner.

In view of the settled proposition of law that appeal barred by time is not an appeal competent, the Board of Revenue is expected to decide the question of limitation and thereafter decide the appeal on merits in case, the delay is condoned.

It appears that the Board of Revenue issued certain directions which gave a reasonable apprehension in the mind of the petitioner that the Board of Revenue may decide the question of limitation as well as appeal itself and by this, the case of the petitioner may be prejudiced as for condoning delay, there may be ground or there may not be.

In view of the above, this writ petition is

disposed of as it is expected from the Board of Revenue that it will decide the issue of limitation before deciding the appeal.

(PRAKASH TATIA), J.

S.Phophaliya